

As to the classification of his position, the appellant states that his supervisor's demotion from Chief, Bureau of Forest Management to Regional Forester occurred in December 2014. He argues that, had his appeal been sent in by DEP in February 2014, the classification audit would have happened prior to this demotion, and there would not be an inappropriate reporting relationship. The appellant also believes that the organizational chart shows that he reports to the Chief, Bureau of Forest Management, since he reported to Donald Swaysland prior to Mr. Swaysland's demotion. He argues that the position of Chief, Bureau of Forest Management is now vacant, and all Regional Foresters report to the State Forester.

As to supervisory responsibilities, the appellant states that five or six years ago there were almost 20 people in the Urban and Community Forestry Assistance Act program, and he is the only one left. He states that he was told that he had to run the program using hourly employees until he became a Regional Forester, at which point additional staff could be added. He states that he is overwhelmed running the program single-handedly and will have to leave if he does not get a promotion and get some help. He argues that had his original appeal been submitted in a timely fashion, the record would have shown that he had one or three hourly employees reporting to him. He states that the argument that supervision has to include performance evaluations is a "cop-out," since he is responsible for the safety, performance, and "anything else the supervisor is responsible for" for hourly employees. He argues that vacancies in the program resulted in no staff to supervise, and then no one can be hired to assist him because he is not in a supervisory title. He states that there is more work in the program than one person can do, and that training someone in a higher title would take about two years, and he would have to supervise their work.

DAS's determination listed the appellant's duties in bulleted form. The appellant believes that most of these duties should begin with, "supervises." He argues that the last duty does not include his "federal coordination as the State Urban/Community Forestry Coordinator." He also argues that page 4 of the determination did not explain "the Regional Forester's equivalent of the [Assistant Regional Forester's] tasks," which was unfair.

CONCLUSION

The definition section of the class specification for the title Assistant Regional Forester states:

Under general supervision of a Regional Forester or other supervisory official in the Department of Environmental Protection, plans and implements and/or may assist in the oversight of forestry programs which include contract monitoring in an assigned region of the state,

provides professional advice to forestry personnel, industrial organizations, and residents of the state; may serve as field authority in the scientific discipline of forestry; provides professional forestry reviews, planning, and recommendations for forestry programs within an assigned region or central office; does related work as required.

The definition section of the class specification for the title Regional Forester states:

Under the direction of a Supervising Forester, or other higher level supervisory officer in the Bureau of Forest Management, Division of Parks and Forestry, Department of Environmental Protection, either (a) supervises the implementation of forest management programs on state-owned forestland and is responsible for efforts which influence policies, programs, and retention of privately-owned forestland; or (b) acts as an authority in the scientific field of forestry by contributing to major problem-solving and supervision of forestry assistance programs and provides expert, technical advice to forestry supervisory personnel, the public and/or wood-using industries; does related work as required.

At the outset, classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Duties which are anticipated to be assigned in the future cannot be considered in a classification review and are not material to the position's current classification.

First, it must be stated that the classification consultant's role is strictly limited to an independent review of the assigned duties and responsibilities of the position in question. Issues such as the historical organization of the work unit and functional or working titles are not to be considered. Moreover, it is longstanding policy that only those duties and responsibilities assigned at the time of the request for a reclassification are to be considered. The appellant maintains that there is more work in the program than one person can complete, and therefore, he should be assigned subordinates. Nevertheless, it must be emphasized that the appointing authority has the right to determine the organizational structure of its operation. As long as there are no improper reporting relationships or misclassifications, how the office is organized or how often the office is reorganized is not under the jurisdiction of the Civil Service Commission or reviewable in the context of a classification appeal. The appointing authority is not required by Civil Service rules to hire staff. Rather, each agency must have adequate personnel to satisfy legislative and administrative requirements. How this is accomplished is the prerogative of the appointing authority.

In the instant matter, the organization of the "No Net Loss" (NNL) section shows that the appellant's supervisor, Donald Swaysland, is a Regional Forester,

and that the position of Chief, Bureau of Forest Management is vacant. As such, the record supports that it would be an inappropriate reporting relationship for the appellant's position to be classified as Regional Forester. Further, the organizational chart does not show the appellant is supervising. In this respect, DAS's determination regarding supervision is correct. It is uncontested that the appellant does not have the responsibility for administering formal performance evaluations. However, it is well established that supervisory duties include responsibility for seeing that tasks assigned to subordinates are efficiently accomplished. It involves independent assignment and distribution of work to employees, with oral or written task instructions, and maintenance of the flow and quality of work within a unit in order to ensure timely and effective fulfillment of objectives. Supervisors are responsible for making available or obtaining materials, supplies, equipment, and/or plans necessary for particular tasks. They provide on-the-job training to subordinates when needed, *and make employee evaluations based on their own judgment*. In fact, the Civil Service Commission has found that the essential component of supervision is the responsibility for formal performance evaluation of subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 16, 2001). They have the authority to recommend hiring, firing, and disciplining employees. *See In the Matter of Julie Petix* (MSB, decided January 12, 2005).

DAS has determined that the appellant's position is properly classified as assisting in the oversight of a program and providing professional advice, as well as functioning as a field authority. On the appellant's Position Classification Questionnaire (PCQ), the position's supervisor stated that the most important duties of the position were the implementation of the New Jersey Shade Tree and Community Forestry Assistance Act, managing the Urban and Community Forestry Assistance Act grant, and acting as the "federal role as the New Jersey Urban Forestry Coordinator." DAS provided a detailed summary of the appellant's duties. It condensed the appellant's tasks, and the duties listed in the determination are a summary of duties rather than a word for word copy of what was submitted or provided at the interviews. The appellant accounted for 100% of his time on his PCQ, and the duties given by DAS in its determination encapsulate the majority of his tasks. A review of the file indicates that the appellant does not implement an entire forestry management program or supervise an entire forestry program. He serves as a field authority and provides professional forestry reviews, planning, and recommendations for forestry programs. The duties given do not rise to the level and scope of acting as an authority by contributing to major problem-solving and supervision of forestry assistance programs and providing expert, technical advice to forestry supervisory personnel, the public and/or wood-using industries. In this regard, it is not uncommon for employees to perform some duties above or below their title. However, classification determinations are based on duties that make up the majority of duties for a position. While some of the appellant's duties fall in the Regional Forester definition, the preponderance of his duties may be performed

by an Assistant Regional Forester. Accordingly, a thorough review of the entire record fails to establish that Alexander McCartney has presented a sufficient basis to warrant a Regional Forester classification of his position.

As to the effective date of the classification of his position to Assistant Regional Forester, the appointing authority was contacted in regard to the timeliness of the submission of the appeal to DAS. It responded that it received the appeal on February 12, 2014. As it was incomplete, it returned the paperwork for signatures. It again received the documents on April 23, 2014, and submitted them to DAS after a July 1, 2014 discussion with the appellant regarding his willingness to proceed with the appeal.

N.J.A.C. 4A:3-3.9(c)3 states that the supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form within 15 days of the employee's submission of the appeal to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire, along with the appellant's most recent performance evaluation. Also, *N.J.A.C.* 4A:3-3.9(c)7 states, in pertinent part, that within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional information is required, or forward the appeal with organizational chart to the appropriate representative of the Civil Service Commission. Pursuant to *N.J.A.C.* 4A:3-3.9(e)3i, the effective date of a reclassification action in State service should be the pay period immediately after 14 days from the date the Commission received the appeal or reclassification request, or at such earlier date as directed by the Commission.

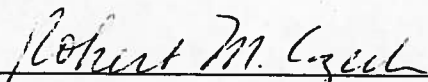
A review of the PCQ reveals that the date next to the appellant's supervisor's signature, and the signature of the Director, was February 6, 2014. Accordingly, pursuant to *N.J.A.C.* 4A:3-3.9(c)3, the appeal should have been forwarded to the Human Resources office no later than February 21, 2014. No reasonable explanation as to why the appellant's appeal was not submitted to this agency until July 2014 has been offered. Therefore, pursuant to *N.J.A.C.* 4A:3-3.9(e)3i, the effective date of the appellant's provisional position should be changed to March 8, 2014.

ORDER

Therefore, the position of Alexander McCartney is properly classified as an Assistant Regional Forester, effective March 8, 2014.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 3rd DAY OF JUNE, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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and
Correspondence

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Enclosure

c: Alexander McCartney
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Kenneth Connolly
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Lt. Governor

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AGENCY SERVICES
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Robert M. Czech
Chair/Chief Executive Officer

February 9, 2015

Mr. Alexander McCartney

[REDACTED]

Re: Classification Appeal
Forester
Position# 082844
CPM# 07140068
Employee Number# 000508039

Dear Mr. McCartney:

This is to inform you, and the Department of Environmental Protection, of our determination concerning the classification appeal referenced above. You are appealing the current classification of your position, Forester. You contend that your current duties and responsibilities are consistent with those of a Regional Forester.

This office has conducted a review of the submitted information, including the Position Classification Questionnaire (DPF-44S); organization chart; your Performance Assessment Review (PAR) form; your statements; and the statements of your supervisor, division director, and appointing authority. A telephone audit was performed with you and your supervisor Donald Swaysland, Regional Forester.

Organization:

The position is located in Division of Parks and Forestry, Bureau of Forest Management. You are supervised by Donald Swaysland, Regional Forester (02654, R25). You have no supervisory responsibility.

Findings of Fact:

- Coordinates the New Jersey Community Forestry Program, New Jersey Shade Tree and Community Forestry Assistance Act.
- Provides guidance in the preparation and the implementation of community forestry management plans to consultants and advises communities on forestry management for municipal and county lands and right-of-ways.
- Facilitates a program of assistance to municipalities in the establishment and operation of shade tree committees and/or local commissions in developing ordinances regulating tree planting and removal.
- Prepares annual reports for the U. S. Forest Service and the Bureau on cooperatively funded forestry programs and projects. Writes proposals for funding of personnel, operating accounts, and/or special projects from the federal government.
- Coordinates with municipal officials to solve complex problems concerning tree harvesting ordinances, preparation of municipal ordinances, and the development of community forestry management plans.
- Provides and presents professionally competent illustrated lectures and talks on all aspects of forest management.
- Collects, organizes, and maintains data used by the Community Forestry Program for directories, pamphlets, and published lists which aids in implementing community forestry activities. Works with the communications contact regarding their preparation.
- Prepares programs and tours to raise the public understanding and/or awareness of New Jersey forest and forestry relating to community forestry. Submits ideas and suggestions for pamphlets, brochures, and webpage to the communications contact for implementation.
- Administers Core Funding grants from the U.S. Forestry Service. Reports to the federal government the distribution of grant funds for the urban and community forestry programs.
- Provides advice on forestry issues to the public regarding the benefits of trees and the preparation of specifications for tree planting contracts.
- Provides comments on proposed legislation regarding the Urban and Community Forestry program.

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- Acts as the Arbor Day Foundation Coordinator for the State and leads the State Forestry Service partnership with the Arbor Day Foundation's Disaster Recovery Program. Facilitates outreach programs, Tree City USA, Tree Campus, and Tree Line.

Review and Analysis:

The duties and responsibilities of the position were compared to those described within the class specifications for Forester, Regional Forester and Assistant Regional Forester.

The definition section of the specification for the title, Forester (02652, P19), states:

"Under supervision of a Regional Forester or other supervisory official in the Department of Environmental Protection, implements forestry programs on state, municipal, and private lands; provides professional forestry review, planning, and recommendations for forestry programs within an assigned region or central office; does other related duties."

An incumbent in this title implements forestry programs and provides guidance to state, county, municipal and private land owners. An incumbent reviews, plans and makes recommendations regarding forestry programs.

The definition section of the specification for the title, Regional Forester (02654, R25), states:

"Under the direction of a Supervising Forester, or other higher level supervisory officer in the Bureau of Forest Management, Division of Parks and Forestry, Department of Environmental Protection, either (a) supervises the implementation of forest management programs on state-owned forestland and is responsible for efforts which influence policies, programs, and retention of privately-owned forestland; or (b) acts as an authority in the scientific field of forestry by contributing to major problem-solving and supervision of forestry assistance programs and provides expert, technical advice to forestry supervisory personnel, the public and/or wood-using industries; does related work as required."

Incumbents are typically required to lead, organize, and assign technical or scientific work, and supervise subordinate staff. An incumbent in this title supervises the implementation of forest management programs or supervises program forestry assistance. Although you coordinate the Community Forestry Assistance Act for the State, you do not supervise staff in the course of your duties. The Regional Forester is assigned to the "R" bargaining unit. Titles in the "R" bargaining unit are utilized for primary or first level supervisory positions. The essential component of supervision is the responsibility for the administration of formal performance evaluations for subordinate staff. Your position does not have supervisory responsibility as you do not prepare Performance Assessment Reviews (PAR) forms for any employee. Since you report directly to Mr. Swaysland, who is classified as a Regional Forester (R25), your appointment to Regional Forester would create an inappropriate and prohibited reporting relationship.

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The definition section of the specification for the title, Assistant Regional Forester (25653, P22), states:

"Under general supervision of a Regional Forester or other supervisory official in the Department of Environmental Protection, plans and implements and/or may assist in the oversight of forestry programs which include contract monitoring in an assigned region of the state, provides professional advice to forestry personnel, industrial organizations, and residents of the state; may serve as field authority in the scientific discipline of forestry; provides professional forestry reviews, planning, and recommendations for forestry programs within an assigned region or central office; does related work as required."

An incumbent in this title assists in the oversight of forestry programs. The duties include but are not limited to contract monitoring, inspecting and overseeing tree planting for on-site reforestation, proposing areas of replanting, and providing technical advice to forestry supervisory personnel, industrial organizations and residents of the state.

Your position provides guidance in the preparation of and implementation of community forestry management plans, advises communities on forestry management, facilitates a program of assistance to municipalities in the establishment and operation of Shade Tree Committees and/or local commissions with developing ordinances regarding tree removal and planting.

Your position prepares annual reports for the U.S. Forest Service and the Bureau on cooperatively funded forestry programs and projects, and writes proposals for funding of personnel, operating accounts, and special projects from the federal government. Your position coordinates with municipal officials to solve complex problems concerning tree harvesting ordinances; coordinates the preparation of municipal ordinances; develops community forestry management plans; conducts long term planning of urban, rural interface and "natural" forest management; and coordinates municipal infrastructural changes in the development of better ecological and tree related environment.

Your position provides and presents professional illustrated lectures on all aspects of forest management to professional societies, service clubs, women's clubs, shade tree and environmental commissions and other organizations. Your position assists with implementing community forestry activities by collecting, organizing, and maintaining data used for directories, pamphlets, and published lists for the Community Forestry Program.

Your position administers core funding grants from the U. S. Forestry Service and reports to the federal government the distribution of grant funds for the urban and community forestry programs. Your position provides advice on forestry issues to the public, municipal and county staff, volunteers, and groups regarding the benefits of trees. Your position provides advice and guidance to municipalities regarding the preparation of specifications for tree planting contracts. Your position maintains essential records and files.

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Your position includes assisting in the oversight of forestry programs, providing professional advice to forestry personnel, organizations, and residents of the state, functions as a field authority regarding scientific disciplines of forestry, and makes recommendations to municipalities and counties regarding the Urban and Community Forestry plan. The preponderance of your duties fall within the scope of an Assistant Regional Forester.

Determination:

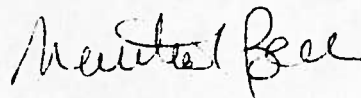
By copy of this letter, the Appointing Authority is advised that we will reclassify your position to Assistant Regional Forester (02653, P22) effective July 26, 2014, unless they assign duties and responsibilities that are commensurate with your current title, Forester (02652, P19) within thirty days of receipt of the determination letter.

This classification determination does not imply that you will meet the eligibility requirements of the title. It is the responsibility of the appointing authority to ensure that an incumbent meets the eligibility requirements prior to any appointment.

The class specification for Assistant Regional Forester is descriptive of the general nature and scope of the functions that may be performed by an incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of related tasks not specifically listed.

Please be advised that in accordance with *N.J.A.C. 4A:3-3.9*, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to Written Record Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Martha Bell,
Team Leader
Agency Services

MTB/db

C: Robin Liebeskind
Veronica Kirkham